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## CHILE

[5 February 1999]

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# I. LAND AND PEOPLE

1. Land: Chile lies on the south-western edge of South America, occupying a long, narrow strip of territory extending some 4,200 kilometres from north to south and averaging 250 kilometres wide. About 3,000 kilometres off its coast, in the Pacific Ocean, are Easter Island and the Juan Fernández archipelago. Chile has a total area of 2,006,626 square kilometres (756,096 square kilometres of continental territory and 1,250,000 square kilometres of Antarctic territory).

2. People:

Total population

| | Total | Male | Female |
|---|---|---|---|
| 1992 census | 13,348,401 | 6,553,254 | 6,795,147 |
| 1998 | 14,821,714 | 7,336,118 | 7,485,596 |

Urban population

| | Total | Male | Female |
|---|---|---|---|
| 1992 census | 11,140,405 | 5,364,760 | 5,775,645 |
| 1998 | 12,623,059 | 6,153,975 | 6,469,084 |

Rural population

| | Total | Male | Female |
|---|---|---|---|
| 1992 census | 2,207,996 | 1,188,494 | 1,019,502 |
| 1998 | 2,198,655 | 1,182,143 | 1,016,512 |

Population density

| | |
|---|---|
| 1992 census | 17.6 inhabitants per square kilometre |
| 1998 | 19.6 " " " " |

Population growth rate

| | |
|---|---|
| 1982-1992 | 1.6 inhabitants per thousand |
| 1997-1998 | 1.3 " " " |

Population aged under 15 years

| | Total | Male | Female |
|---|---|---|---|
| 1998 | 29% | 30% | 28% |

Population aged over 65 years

| | Total | Male | Female |
|---|---|---|---|
| 1998 | 7% | 6% | 8% |

3. Ethnic groups: The ethnic composition of the population aged 14 years and over is: 28,060 Mapuche (470,730 men and 457,330 women), 48,477 Aymara (24,898 men and 23,579 women) and 21,848 Rapanui (9,358 men and 12,490 women). The Chilean State further reccgnizes the Atacama, Quechua and Colla communities of the north of the country, and the Kawashkar or Alacaluf and Yámana or Yaghan communities of the west Patagonian channels.

4. Birth rate:

| | |
|---|---|
| 1992 census | 21.7 per thousand inhabitants |
| 1996 | 19.3 " " " |

5. Global fertility rate:

| | |
|---|---|
| 1992 census | 2.6 children per woman |
| 1996 | 2.4 children per woman |

6. Life expectancy:

| | Male | Female |
|---|---|---|
| 1992 census | 71 years | 77 years |
| 1996 | 72 years | 78 years |

7. Mortality:

Overall mortality

| | |
|---|---|
| 1992 census | 5.5 per thousand inhabitants |
| 1996 | " " " " |

Infant mortality

| | |
|---|---|
| 1992 census | 14.3 per thousand live births |
| 1996 | 11.1 " " " " |

Maternal mortality

| | |
|---|---|
| 1992 census | 0.3 per thousand live births |
| 1996 | 0.2 " " " " |

8. Women: The proportion of households headed by women is 25.3%. The participation of women aged over 15 years in the workforce, in November 1993, was 34.4%, as against 76.7% for men.

9. Religion: The Chilean State is secular and freedom of worship exists. The country's majority religion is Roman Catholicism. According to the 1992 census, 77% of the population said they were Roman Catholic; 12% were Evangelical; 1% Protestant; 4% belonged to other religions and 6% professed indifference or atheism.

10. Language: The official language is Spanish, but Mapundugum (Mapuche), Aymara and Rapanui are also spoken in the indigenous communities. The basic schools located in areas of indigenous influence dispense bilingual education.

11. Literacy: The approximate overall literacy rate is 94.6%, breaking down into 94.8% of men and 94.4% of women. Urban literacy is around 96.3%, corresponding to 96.7% of men and 96% of women. Rural literacy is about 86%, corresponding to 86.3% of men and 86% of women.

Economic indicators 1/

12. The nominal gross domestic product (GDP) in 1997 was $77,100 million. Per capita GDP in 1997 was $5,273. The annual inflation rate for 1997 was 6%. The foreign debt at 31 December 1997 was $26,775 million. On the basis of a workforce of 5,683,820 persons, the national unemployment rate in the quarter October-December 1997 was 5.3%. In the same period 4.7% of men and 6.6% of women were jobless.

## II. GENERAL POLITICAL STRUCTURE

### A. Historical outline

13. The present territory of Chile was discovered by the Spanish Crown in the mid-sixteenth century. The first discoverers arrived from the Viceroyalty of Peru. Chile was a Government and was also given the status of Captaincy General - in recognition of the war waged against the Mapuche people - until its independence from the Kingdom of Spain in the nineteenth century.

14. The first act of emancipation was recorded on 18 September 1810, with the establishment of the First National Junta of Government. The Independence Act was signed on 12 February 1818 and Bernardo O'Higgins, the soldier who led the patriotic troops, was proclaimed Supreme Director of Chile. In July 1823 the abolition of slavery was decreed, Chile being one of the first countries to take that step.

15. The promulgation of the 1833 Constitution saw the consolidation of a presidential-type republican political system based on the separation of state powers and the regular renewal of the Congress and of the President of the

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1/ Sources: Banco Central, Pro Chile, Ministry of Foreign Affairs, Instituto Nacional de Estadística.

Republic, through popular election under the property-based ballot system peculiar to the period. Starting in that year, the country maintained a process of establishment of the rule of law, interrupted only twice: by the civil war of 1891 that culminated in the victory of the advocates of a parliamentary system over the champions of presidential rule; and by the political and governability crisis of the 1924-1932 period, which saw a succession of short-lived military governments as a consequence of the emergence of the middle and popular classes of society, altering the traditional structures of political and economic power.

16. The approval of the Political Constitution of 1925 restored a staunch presidential system which, as of 1932, marked the start of an extensive period of normality in the generation of rulers and the consolidation of democratic institutions, which underwent change by means of gradual constitutional reforms that increased popular participation in the political process. In January 1934 a law was enacted giving the vote to women and foreigners in municipal elections, which measure was extended to presidential and parliamentary elections with a law of January 1949. The last amendments to the 1925 Constitution were made in 1971 and were intended to guarantee the rule of law and modernize the regularization of social and personal rights, expressly establishing political rights, improving the freedom of opinion for the sake of pluralism of the democratic system, and encouraging participation of the community with the constitutional recognition of its organizations.

17. On 11 September 1973, the democratic institutional system was disrupted with the overthrow of the constitutional government of President Salvador Allende Gossens and the establishment of the military regime - headed by General Augusto Pinochet Ugarte - which lasted until 11 March 1990.

18. From 11 September 1973 to August 1988 the country lived under one or more states of exception, a context that left the way open - during that period - to a situation of systematic violation of human rights, according to the National Commission on Truth and Reconciliation, a body set up in 1990 by the democratic government of President Patricio Aylwin to investigate the truth of what happened to the victims of the worst violations of fundamental rights during the period of military rule.

19. The military regime put an end to the economic policy that had prevailed in Chile in recent decades, based on import substitution, the encouragement of national industry, protectionism and state control and regulation to stimulate internal growth, with the State's participation in the production process through public enterprises. What was established instead was the social market economy model now operative, based on free private enterprise, private property, the determination of prices by market forces, stimulation of the export sector, the opening up of the economy to international trade and foreign investment, the subsidiary role of the State and a reduction in its size through the privatization of public enterprises.

20. The Political Constitution of 1980, now in force in Chile, was drawn up and put into effect during the rule of the military regime headed by General Augusto Pinochet. This Constitution establishes a highly presidential political system and contains certain authoritarian aspects that the sectors favouring unrestricted democracy have sought to modify since the defeat of General Augusto

Pinochet in the plebiscite, which modification was achieved in part with the constitutional reform of 1989.

21. An end to the period of military rule was obtained by means of a non-violent political solution that implied acceptance of the 1980 Constitution by the various forces opposed to General Pinochet's rule. As mandated by the Constitution, a plebiscite was held on 5 October 1988 to ratify or reject the designation of General Pinochet - made by the ruling Military Junta - to be president for the period of transition to democracy which, according to the Constitution, would last until 1997.

22. The rejection of that designation, with the victory of the "No" in the plebiscite, triggered a process of political negotiation between the authorities of the military regime, the political forces that supported it and those that opposed it, which produced a set of 54 constitutional reforms designed to change the most authoritarian aspects of the 1980 Constitution. The reforms, which were ratified by the citizens in a July 1989 plebiscite, include: amendments to the norms regulating states of exception, for the purpose of strengthening respect for human rights during such periods; the granting of constitutional rank to international human rights treaties that have been ratified by Chile and are in force, together with the duty of public bodies to respect and promote such rights; derogation of Article 8 of the Constitution, which severely restricted the activity of political parties; and the embodiment of political pluralism as a constitutional guarantee.

23. Democratic elections were subsequently called in December 1989. On 11 March 1990 Mr Patricio Aylwin Azócar took over as President of the Republic, having been elected for a four-year term of office. The present President of the Republic, Mr Eduardo Frei Ruiz-Tagle, was likewise elected in 1993 and is to remain in office until 11 March 2000.

24. Once democracy had been recovered in 1990, the National Congress was formally installed and a start was made on the process of restoring the democratic institutional system. Since then there has been a period marked by normal operation of the rule of law. No states of exception have been declared and the rights and freedoms guaranteed by the Political Constitution of the State have been placed under no restriction. The democratic governments of Presidents Aylwin and Frei have incorporated in the free market system a strategy of growth with equity, maintaining the macroeconomic balances and laying firm emphasis on social programmes to reduce poverty and exclusion, improve health and provide all Chileans with opportunities for education and training. They have also assisted the country's international reintegration in forums, world bodies and multilateral and bilateral treaties concerning trade, politics and human rights.

25. There are nevertheless still obstacles to a more democratic institutional system that have to do with the following factors:

(a) The binominal electoral system - alien to Chile's tradition and multiparty reality - does not permit adequate proportional representation of majorities and minorities, favouring the second electoral force in relation to the first and eliminating minority groups, which are thus left without parliamentary representation unless they join in electoral pacts.

(b) Nine senators are not elected by popular ballot but appointed by the members of the Supreme Court, the National Security Council and the President of the Republic.

(c) The resolutive character and the functioning of the National Security Council enable agreements to be reached by an absolute majority, which means that the representatives of the Armed Forces (four of the eight members of the body) weigh decisively in its decisions. The National Security Council is at present chaired by the President of the Republic and made up of the Presidents of the Senate and the Supreme Court, the Commanders-in-Chief of the Armed Forces, the Director General of the Carabineros (paramilitary police) and the Comptroller General of the Republic. The central functions of the Council are: to advise the President of the Republic on national security matters; to make known to him, to the National Congress and to the Constitutional Court its opinion on occurrences that cause severe prejudice to the institutional order and national security; to seek from authorities and public officials all requisite background material with respect to the external and interior security of the State, with which it is compulsory to provide the Council; to report previously on matters of law prescribing the air, sea and land forces to be maintained in times of peace and war, in addition to permitting the entry of foreign troops into the territory of the Republic and the departure from it of national troops.

(d) The Constitutional Court is not democratic in its composition since some members are appointed by the National Security Council. The fact that three members of the Supreme Court belong to the Constitutional Court produces a de facto duplication of functions. Its composition is restrictive on account of the requirements of membership. The Constitutional Court at present has seven members: three justices of the Supreme Court, elected by the latter; two lawyers elected by the National Security Council; a lawyer appointed by the President of the Republic; and a lawyer elected by the Senate.

(e) The Commanders-in-Chief of the Armed Forces (Army, Navy and Air Force) and the Director General of the Carabineros cannot be removed from office by the President of the Republic, as explained below (para. 32).

26. The democratic governments of Presidents Aylwin and Frei have submitted to the National Congress draft constitutional reforms intended to modify the aforementioned institutions that hamper the existence of a full democracy, which change has not been possible for want of support of the political opposition and on account of the presence of appointed senators (see para. 41(b)).

## B. The State

27. The State of Chile is unitary in structure. The territory is divided into 12 regions and a metropolitan area in which Santiago, the country's capital, is situated. Each region is divided into provinces and each province into communes.

28. The political form of the State is the democratic system. The constitutional order enshrines a representative democracy in which the political authorities are elected directly by the people for a fixed term. Sovereignty is exercised by the people through regular elections and plebiscite and by the authorities established by the Constitution. Elections are used to choose the

President of the Republic, the members of the National Congress, city councillors and mayors. Plebiscites - whose scope is very limited - are resorted to for the adoption of constitutional reform decisions. Provision is also made for rudimentary aspects of semi-direct democracy through communal plebiscites.

29. As a legacy of the period of military rule between 1973 and 1990, the Constitution provides for a feature alien to the democratic system, which is the existence of some 20 per cent of the members of the Senate not elected by popular ballot but designated by particular state bodies.

30. The form of government within the democratic State is an essentially presidential republic.

## C. The Executive

31. The Constitution refers to this branch of the State as the "Government", headed by the President of the Republic, who is the Head of State and in whom are vested the functions of government and administration which he performs in direct and immediate cooperation with the ministers of State, intendants, governors, mayors and other authorities. The President of the Republic is elected by universal suffrage for a period of six years and cannot be re-elected for the ensuing term. By constitutional reform of 1989, a four-year presidential term of office was exceptionally set for the person to assume the charge of President of the Republic on 11 March 1990, a period served by President Patricio Aylwin.

### 1. Powers of the President of the Republic

32. The President of the Republic has many different powers - constituent, legislative, political, international, military, financial, judicial and administrative - including the following:

- to submit draft constitutional reforms, to participate in their discussion in the Chambers of Congress, to make observations, to approve or reject draft reforms referred to him by the Chambers and to call a plebiscite in the event of a conflict between the President and the Congress over the reforms;

- to contribute to the making of laws in accordance with the Constitution and to sanction and promulgate them; by virtue of this faculty, he has exclusive initiative in the most important matters of law, participates in the discussion of any bill through his ministers; notifies urgent matters and makes observations on approved draft legislation;

- to conduct political relations with foreign nations and international organizations;

- to order the disposition of the air, sea and land forces; to organize and distribute them in accordance with national security needs;

- to assume, in the event of war, supreme command of the Armed Forces;

- to appoint and dismiss Commanders-in-Chief of the Army, Navy and Air Force and the Director General of the Carabineros. Article 32(18) of the Political Constitution expressly includes among the powers of the President that of appointing and dismissing the persons mentioned. Article 93 states that they shall be appointed by the President of the Republic for four years during which period they shall not be subject to removal from their posts, and that they may not be reappointed for a new term of office. Article 94 then provides that appointments, promotions and retirement of officers of the Armed Forces and the Carabineros shall be effected by supreme decree "in accordance with the corresponding constitutional organic law, which shall determine the respective basic norms". For their part, the constitutional organic laws of the Armed Forces and Carabineros of Chile, when addressing the matter of appointments, promotions and retirement of officers, repeat that they shall be effected by supreme decree and add the requirement of a "proposal by the corresponding institutional Commander-in-Chief and by the Director General, respectively". In other words, this norm in fact deprives the Head of State of his power to decide in the matter since without the proposal of the high command of the Armed Forces or the Carabineros he is unable to exercise his constitutional authority;

- to declare states of exception in the instances and forms provided for in the Constitution;

- to watch over the collection of public revenue and decree its expenditure in accordance with the law;

- to appoint the magistrates of the high courts of justice and the judges, on the proposal of the Supreme Court and the Courts of Appeal, respectively;

- to appoint and dismiss ministers of State, undersecretaries, intendants, governors, diplomatic agents and, in general, public officials enjoying his exclusive confidence;

- to exercise executive rule unilaterally issuing general or special norms such as regulations, decrees and instructions for the government and administration of the State;

- to issue legally binding decrees upon delegation of powers from the Congress by means of a law.

2. State administration

33. The administration consists of ministries, intendancies, provincial governments and the public bodies and services established for fulfilment of the administrative function, including the Office of the Comptroller General of the Republic, the Central Bank, the Armed Forces and the Forces of Public Order and Security, the Municipalities and the statutory public enterprises.

3. Ministers of State

34. They are direct and immediate collaborators of the President of the Republic in the government and administration of the State. There are at present the following ministries: Interior; Foreign Affairs; National Defence; Economy, Promotion and Reconstruction; Finance; Education; Justice; Public Works; Agriculture; National Resources; Labour and Social Security; Public Health; Mining; Housing and Urban Development; Transport and Telecommunications; Office of the Secretary General of the Government; National Planning; and Office of the Secretary General of the Presidency of the Republic. In addition to those 18 ministries, the Director of the National Women's Service (SERNAM) holds ministerial rank.

4. Intendants, Governors and Mayors

35. The intendants - enjoying the exclusive confidence of the President of the Republic - exercise the government of each region. The governors, who may be appointed and dismissed at will by the President, are in charge of administering the provinces. The local administration of each commune or group of communes is the responsibility of the municipalities; their highest authority is the mayor, who is elected by popular ballot and remains in office for four years.

5. Public force

36. The 1980 Constitution has a special chapter on the Armed Forces and the Forces of Order and Public Security, establishing a clear separation between the Armed Forces and the Forces of Order and Public Security. The former consist of the Army, the Navy and the Air Force, while the latter are made up of the Carabineros (paramilitary police) and the Police Department - uniformed and plain-clothes, respectively - who together form the "public force". Its specific duty is to guarantee public order and internal public security, and also to give effect to law with the aid of courts of justice in the implementation of court orders, given that the courts lack their own enforcement bodies. As of 1974, with the promulgation of Decree Law N° 444, during the period of military rule, both the Carabineros and the Police Department, formerly coming under the Ministry of the Interior, were switched to the Ministry of Defence, under the Carabineros and Police Department Undersecretaries, respectively.

37. Although the Carabineros have the necessary legal powers to take action in crime control, in the matter of public order - in actual fact and without this implying mandatory authority - they receive instructions and guidance from the Ministry of the Interior since the Ministry of Defence has no powers in this respect. This relationship between the Ministry of the Interior and the Carabineros is also given effect by the fact that - by supreme decree - this State Secretariat is entrusted with coordinating the rest of the ministries where citizen security is concerned.

38. Despite their common dependency, there are differences between the two police forces. While the Director General of the Carabineros cannot be removed from office, the Director General of the Police Department may be appointed and dismissed at will by the President of the Republic. With regard to the jurisdictions under which their members come, the Carabineros are subject to military justice while members of the Police Department, like any civilians, may

be tried in ordinary courts of justice. Furthermore, the Constitution grants the Armed Forces (Army, Navy and Air Force) and the Carabineros the character of armed corps, excluding in that respect the Police Department, whose members are nevertheless empowered to use firearms under their organic law.

## D. The Legislature

39. The central legislative bodies of the Chilean State are: the National Congress, whose two branches together shape legislation, in addition to their supervisory and advisory activities with respect to policy; and the President of the Republic, who co-legislates in exercising his powers of legislative initiative, partial suspensive veto, authorization of legislative powers, qualification of draft legislation as urgent, participation in parliamentary debate through ministers, and sanction and promulgation of laws.

### 1. Law-ranking norms

40. In Chile, laws are categorized thus: organic and constitutional laws, which refer to matters expressly mentioned in the Constitution; laws interpreting the Constitution; qualified-majority legislation; common and ordinary laws. There are in addition international treaties, which, once agreed to by the Congress, rank as laws.

41. Legally binding decrees issued by the President of the Republic also rank as laws, as do the decree laws issued during the period of military rule and so endorsed by jurisprudence.

### 2. Composition of the National Congress

42. The 1980 Constitution establishes a bicameral system, in keeping with Chilean tradition. The National Congress consists of two chambers: the Chamber of Deputies and the Senate. The former is composed of 120 members elected by direct vote and is renewed in full every four years. The Senate is made up of three categories of members: (a) 38 who are elected by direct vote, remain in office for eight years and are replaced alternately every four years, those representing odd-numbered regions being replaced in one period, and those representing even-numbered regions and the metropolitan area being replaced in the following period; (b) nine senators who are appointed every eight years by the following state bodies: two former justices of the Supreme Court, elected by the latter; a former Comptroller General of the Republic, elected by the Supreme Court; a former Commander-in-Chief of the Army, one of the Navy, another of the Air Force, and a former Director General of the Carabineros, all elected by the National Security Council; a former rector of a state or state-recognized university, appointed by the President of the Republic; a former minister of State, appointed by the President of the Republic; (c) one or more senators as of right, to serve for life, who are former Presidents of the Republic having been in office for six years.

43. Deputy and senator posts are incompatible with each other and with any employment or assignment paid for out of public funds or funds of the municipalities, of autonomous state entities, of semi-public bodies or state enterprises, or of entities in which the Treasury has a capital holding, and with any other function or assignment of the same nature.

3. The Chamber of Deputies

44. The following are exclusive powers of the Chamber of Deputies:

- oversight of government action;

- accusation in proceedings against the President of the Republic, magistrates of the high courts of justice, the Comptroller General of the Republic, generals and admirals of the Forces of National Defence, intendants and governors.

4. The Senate

45. The following are exclusive powers of the Senate:

- to take cognizance of the accusations presented by the Chamber of Deputies in proceedings against the aforesaid authorities, in which the Senate acts as a jury and confines itself to declaring whether or not the accused is guilty of the crime, offence or abuse of power specified in the charge;

- to decide on the admissibility of such lawsuits as individuals may seek to bring against any minister of State;

- to rule on conflicts of jurisdiction between political or administrative authorities and high courts of justice (courts of appeal, courts martial and Supreme Court of Justice);

- to grant reinstatement of citizenship to those sentenced to afflictive punishment;

- to give or withhold its consent to the appointment by the President of the Republic of specific public officials;

- to grant its consent to the absence of the President of the Republic from the country for a period exceeding 30 days;

- to accept or reject the resignation from his post of the President of the Republic;

- to approve the declaration of the Constitutional Court on the responsibility of persons attacking the institutional order of the Republic;

- to give its opinion to the President of the Republic upon the latter's request.

5. The Congress

46. The following are exclusive powers of the Congress:

- to approve or reject international treaties submitted by the President of the Republic prior to their ratification;

- to pronounce in respect of the state of siege.

## E. The Judiciary

47. The Judiciary consists of the following ordinary courts: the Supreme Court of Justice, the various courts of appeal, court presidents and justices, and the courts of general jurisdiction. The following are also part of the Judiciary as special courts: juvenile assize courts, labour courts, and military courts in peacetime.

### 1. The Supreme Court of Justice

48. The Supreme Court of Justice has its headquarters in the capital of the Republic. It consists of 21 judges, one of whom is elected by the Court itself, every three years, to be its president. Both the judges and the prosecuting attorneys of the Court are appointed by the President of the Republic from a slate of five persons proposed by the Court itself and with the consent of the Senate.

49. The Supreme Court has powers of management, control and supervision of all the courts of the nation, with the exception of the Constitutional Court, the Electoral Qualifying Court, the regional electoral courts and the military courts in time of war.

50. Powers of management refer to all the powers implied by the precedence of the Supreme Court over the rest of courts in the country, such as the formation of slates for the appointment of judges of the Court of Appeal and the Supreme Court, declaration of inapplicability of legal rules, the handling of proceedings to do with amparo, protection, appeal and substantive judicial review for the purpose of standardizing the interpretative criterion of the law in force.

51. Powers of control refer to the authority to apply sanctions and adopt measures in order to ensure that judicial officials abide by the standards regulating the performance of their duties.

52. Powers of supervision refer to measures adopted by the Court in order to secure prompt and improved administration of justice, including the authority to issue agreed orders such as those regulating amparo proceedings, applications for protection, and actions of unconstitutionality. The Supreme Court also entertains conflicts of jurisdiction arising between career judges and the political and administrative authorities (ministers of State, intendants, governors, mayors).

### 2. The courts of appeal

53. There are 17 courts of appeal, located in the following communes of the country: Arica, Iquique, Antofagasta, Copiapó, La Serena, Valparaíso, Santiago, San Miguel, Rancagua, Talca, Chillán, Concepción, Temuco, Valdivia, Puerto Montt, Coihaique and Punta Arenas. The number of judges and investigators varies according to the court and they are appointed by the President of the Republic from a slate of names proposed by the Supreme Court.

3. The lower courts

54. These courts are presided over by career judges who are appointed by the President of the Republic from a slate of names proposed by the court of appeal of the corresponding jurisdiction. The other judicial officials (secretaries, clerks, marshals, appeal court attorneys and auxiliary personnel) are appointed in accordance with the rules set by the Courts Organization Code. This organic law specifies the requisite qualifications of the judges and the number of years the prospective court justices or career judges must have served as lawyers.

4. Jurisdiction

55. The requisite organization and powers of the courts for the prompt and sound administration of justice throughout the country are governed by the Courts Organization Code. The Chilean legal order empowers the courts of justice to settle legal disputes arising between the parties, through the application of rules and sanctions established by law or through equity proceedings where the law expressly so permits.

5. Competence

56. The controversy termed trial, lawsuit or legal dispute may be of a civil nature, in which case it lies within the jurisdiction of the civil courts. If the dispute is of a penal nature, it lies within the jurisdiction of the criminal courts.

57. The ordinary courts are also competent to handle conflicts arising between individuals and the administration of the State, its agencies or the municipalities, since there are no administrative courts.

6. Second hearing principle

58. The general norm is that the aforesaid courts handle the lawsuits within their jurisdiction, and through appeal the judicial rulings are reviewed at second instance by the courts of appeal. The rulings at first instance of the military courts may be appealed against before the Court Martial.

7. Principles of constitutional rank underlying the Judiciary's work

59. The principles of constitutional rank that underlie the Judiciary's work are:

- the principle of legality, which holds that nobody may be judged by special commissions but by the court so designated and previously established by law;

- the principle of obligatoriness whereby the courts must always entertain the cases referred to them;

- the principle of independence, which exclusively entrusts the courts of justice established by law with the power to try, adjudicate and enforce judgments in civil and criminal cases, debarring the President of the Republic and the Congress from dealing with the

cases, reopening them after judgment has been handed down and reviewing the grounds or substance of judicial rulings;

- the principle of irremovability, intended to guarantee independence in the administration of justice, which prevents judges from being removed from their posts when discharging their duties in accordance with the conduct required by the laws and the Constitution;

- the right to command, the power whereby the ordinary and special courts making up the Judiciary enforce their decisions, for which purpose they give direct orders to the public force, namely the Carabineros and the Police Department (see para. 36).

## III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

### A. Protection of fundamental rights in the Constitution

60. Article 19 of Chapter III of the Constitution enumerates the fundamental rights and freedoms that are protected under various international instruments. The Constitution guarantees to all persons: the right to life and to the physical and psychic integrity of the individual; freedom from any unlawful pressure; equality before the law; equal protection under the law in the exercise of rights; the right to legal defence and to be tried by the court so designated and previously established by law; the right to guarantees of rational and just proceedings, and the right not to be punished with a penalty other than that provided for in a law enacted prior to perpetration of the crime, unless the new law should favour the interested party; the right to respect for and protection of private and public life and the honour of individuals and their families; the inviolability of the home and all forms of private communication; freedom of conscience; the right to personal freedom and to individual security, and the right to live in a pollution-free environment and to enjoy health protection; the right to education and to freedom of instruction; freedom of opinion and the right to disseminate information without prior censorship; the right of peaceful assembly without prior permission and unarmed; the right to submit petitions to the authorities; the right of association without prior permission and to political pluralism; freedom to work; access to all public positions and employment; the right to social security; the right to organize; the equal distribution of taxes; the right to engage in any economic activity, abiding by the legal norms regulating it; freedom from arbitrary discrimination by the State and its bodies in economic matters; freedom to acquire ownership; the right of ownership; copyright on creative intellectual and artistic works; and industrial property rights.

61. The provisions of Article 19 of the Constitution are not exclusive, so that the enumeration of rights in the article is not exhaustive. This is indicated by the reliable record of the norm, regarding which the drafters state: "We have contemplated a norm ensuring respect for every right inherent in the human person, notwithstanding that it may not be expressly designated in the text".

62. The norms of Chapter III of the Constitution are in harmony with those of Chapter I, which also refer to essential rights emanating from the human

condition, such as Article 1, first subsection, which reads: "Men are born free and equal, in dignity and rights"; and the fourth subsection, subsequently mentioned in conjunction with Article 5, second subsection (see paras. 72, 73, 74 and 85).

63. Political rights, together with the nationality of natural persons, another essential right, feature in Chapter II of the Constitution.

64. According to Article 116, second subsection, of the Constitution, to modify Chapter III, covering fundamental rights, and Chapter I, a more rigid reform procedure is required than that applicable to the modification of other chapters of the Constitution.

States of exception

65. The Political Constitution of the Republic (Arts. 39 *et seq.*) makes provision for the following: a state of alert, in the event of external war; a state of siege in the event of internal war or disturbances; a state of emergency in serious cases of disturbance of the peace and damage or threat to national security, owing to internal or external causes; a state of catastrophe in the event of a public calamity.

66. Article 19, paragraph 26, of the Constitution expressly guarantees that the norms regulating or complementing the fundamental rights that it recognizes cannot affect them in their essence or impose conditions, taxes or requirements impeding their free exercise. For the purpose of strengthening this principle, the constitutional reform of August 1989 repealed the second subparagraph, whereby "the norms relating to states of constitutional exception and others which the Constitution itself contemplates" were excepted from the guarantee.

## B. Reception of international law in the internal legal order

### 1. Customary international law and general principles of law

67. There is no explicit general norm establishing the automatic incorporation of customary norms and of the general principles of law in Chile's internal legal order. Hence the following possibilities have to be distinguished: when a legal rule of the internal regulations refers expressly to international law in a specific situation, in which case the Chilean courts must apply it; or where no such express reference exists, a situation in which the constant position of jurisprudence endorsed by legal writers has been to attribute legal validity to international law.

### 2. International treaties

68. Failing an express norm regulating this matter, the jurisprudence endorsed by legal writers takes the view that the reception of any international treaty in the internal legal order takes place through the conjunction of three stages: its approval by the National Congress, its promulgation by the President of the Republic, and the publication in the Diario Oficial (Official Gazette) of the text of the treaty and of the decree of promulgation. The basis of this interpretation of the courts is to be found in Article 50, paragraph 1, of the Constitution, which gives the National Congress exclusive power to: "approve or

reject international treaties submitted by the President of the Republic prior to ratification thereof. Approval of a treaty shall be subject to the same procedures as those prescribed for a law".

69. Once the international treaty has been approved in accordance with the aforesaid steps, its provisions may be applied by the courts and the administrative authorities and be pleaded before them.

70. In relation to other sources of internal law, the force of the international treaty is equivalent to that of the law. This is the conclusion of the prevailing jurisprudence of the consensus of legal writers, failing any express norm determining the matter.

3. Status of international human rights treaties

71. The Political Constitution grants special value in the internal legal order to international human rights treaties, as explained below.

72. The constitutional reform of 1989 modified the second paragraph of Article 5 of the Constitution, which read: "The exercise of sovereignty recognizes as a limitation respect for the essential rights originating from human nature". The amendment added that: "It is the duty of the organs of the State to respect and promote such rights guaranteed by this Constitution, and by the international treaties which have been ratified by Chile and are in force".

73. The added text was incorporated for the specific purpose of strengthening human rights in the country's legal order and establishing for all bodies and authorities of the State the duty to respect and promote them, incorporating in the Constitution the human rights treaties which according to the previous norms ranked as laws.

74. This norm extended the range of human rights protected in the Constitution and it is to be understood that the fundamental rights, duties and guarantees forming part of the international treaties ratified by Chile and in force in the country increase and complement the range of rights embodied in Article 19 of the Political Constitution of the Republic and have their same constitutional status. The internal legal system is thus linked to the international human rights order to which Chile belongs. The debate still existing in the country on the violation of human rights during the period of military rule makes it harder to achieve a stable consensus in the doctrine and jurisprudence on the constitutional status of the aforesaid treaties. The theme of compatibility between the human rights treaty norms in force and those of the internal legal order is at present the subject of debate with respect to doctrine and jurisprudence. The courts have ruled in this connection, particularly in cases relating to application of the 1978 Decree Law on Amnesty, putting an end to judicial proceedings investigating cases of disappeared detainees. A Supreme Court judgment of 1990 rejected the thesis of inapplicability, on the grounds of unconstitutionality, of legal rules on amnesty. But two Court of Appeal judgments of 1994 ruled out application of the Decree Law on Amnesty and the consequent closing of the judicial investigation regarding disappeared detainees, on the ground that amnesty is expressly or implicitly prohibited under international conventions to which Chile is party, opening the way to direct application of international human rights law by the country's courts.

This ruling was subsequently revoked by the Supreme Court. The judgments handed down in the aforesaid cases were not issued specifically on the scope of the second paragraph of Article 5 of the Constitution, or on the force of the conventions to which the norm alludes.

4. International human rights treaties ratified by Chile which are in force

(a) Prior to the establishment of the United Nations and the Organization of American States

75. International Convention for the Suppression of the Traffic in Women and Children. Ratification: 15.01.1929. Entry into force: 20.05.1930.

Convention regarding the Status of Aliens in the Respective Territories of the Contracting States. Ratification: 12.03.1934. Entry into force: 14.09.1934.

(Inter-American) Convention on the Nationality of Women. Ratification: 29.08.1934. Entry into force: 12.11.1934.

International Agreement for the Suppression of the White Slave Traffic. Accession: 19.03.1935. Entry into force: 18.06.1935.

International Convention for the Suppression of the White Slave Traffic. Ratification: 19.03.1935. Entry into force: 18.06.1935.

Protocol relating to a certain case of statelessness. Ratification: 20.03.1935. Entry into force: 16.04.1935.

International Convention for the Suppression of the Traffic in Women of Full Age. Ratification: 20.03.1935. Entry into force: 15.04.1935.

(Inter-American) Convention on Political Asylum. Ratification: 28.03.1935. Entry into force: 17.05.1935.

(b) United Nations system

76. Convention on the Prevention and Punishment of the Crime of Genocide. Ratification: 03.06.1953. Entry into force: 11.12.1953.

Convention on the Political Rights of Women. Ratification: 30.09.1967. Entry into force: 18.10.1967.

Convention against Discrimination in Education. Ratification: 26.11.1971. Entry into force: 30.11.1971.

International Convention on the Elimination of All Forms of Racial Discrimination. Ratification: 12.11.1971. Entry into force: 20.11.1971.

Convention relating to the Status of Refugees. Ratification: 28.01.1972, with reservation. Entry into force: 19.07.1972.

Protocol relating to the Status of Refugees. Ratification: 27.04.1972. Entry into force: 20.07.1972.

International Covenant on Economic, Social and Cultural Rights. Ratification: 10.02.1972. Entry into force: 27.05.1989.

International Covenant on Civil and Political Rights. Ratification: 10.02.1972. Entry into force: 29.04.1989.

Convention on the Elimination of All Forms of Discrimination against Women. Ratification: 07.12.1989. Entry into force: 09.12.1989.

Convention on the Rights of the Child. Ratification: 13.08.1990. Entry into force: 27.09.1990.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Ratification: 30.09.1988, with reservations. Entry into force: 26.11.1988. Instrument of withdrawal of reservations deposited: 13.03.1991. Entry into force: 07.09.1991.

Optional Protocol to the International Covenant on Civil and Political Rights. Ratification: 27.05.1992. Entry into force: 20.08.1992.

Slavery Convention; Protocol amending the Slavery Convention; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. Accession: 20.06.1995. Entry into force: 07.11.1995.

(c) Inter-American system

77. Inter-American Convention on the Granting of Political Rights to Women. Ratification: 10.04.1975. Entry into force: 29.05.1975.

Inter-American Convention on the Granting of Civil Rights to Women. Ratification: 10.04.1975. Entry into force: 26.04.1975.

American Convention on Human Rights ("Pact of San José, Costa Rica"). Ratification: 21.08.1990, with declarations. Entry into force: 05.01.1991.

Inter-American Convention to Prevent and Punish Torture. Ratification: 30.09.1988, with reservations. Entry into force: 26.11.1988. Instrument of withdrawal of reservations deposited: 21.08.1990. Entry into force: 13.01.1991.

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará"). Ratification: 15.11.1996. Entry into force: 11.11.1998.

## C. Remedies guaranteeing the exercise of fundamental rights

78. Constitutional and legal norms guarantee all inhabitants of the country judicial and administrative remedies to re-establish their rights in the event of infringement. The remedies of protection and amparo are fully operative at present both in normal circumstances and in periods of exception, which was not the case prior to the constitutional reform of 1989 since neither was admissible during the states of alert and of siege.

### 1. Remedy of protection

79. In accordance with Article 20 of the Constitution, this remedy is intended to preserve the fundamental rights therein specified from deprivation, disturbance or threats to their legitimate exercise on account of arbitrary or unlawful acts or omissions. Although the Constitution does not state this, jurisprudence has determined that the authors of the grievance open to protective action may be the political or administrative authority, an individual or a legal entity. In conformity with the nature of the remedy, its handling - before a court of appeal - is very summary and free of undue formality in order to make the exercise of preventive action effective. The background and the evidence are assessed according to equity. The judgment is definitive and appealable before the Supreme Court within a short period of time. The decisions of the courts must be issued within peremptory time limits, and there are ample opportunities for immediately taking the necessary measures to restore the rule of law and ensure the protection of the person concerned.

80. This remedy ensures most of the rights guaranteed in the Constitution: the right to life and to the physical and psychic integrity of the individual; equality before the law; the right not to be judged by special commissions but by the court specified by law and previously established by law; the right to respect for and protection of private and public life and the reputation of individuals and their families; the inviolability of the home and all forms of private communication; freedom of conscience; the right to choose one's health system; freedom of instruction; freedom of opinion and the right to impart information without prior censorship; the right of peaceful assembly without prior permission and unarmed; the right of association without prior permission; freedom to work; freedom to organize; the right to engage in economic activity; freedom to acquire ownership; the right of ownership; copyright; and the right to live in a pollution-free environment. Individual freedom and security are protected by the remedy of amparo.

### 2. Remedy of amparo

81. Under this name the Political Constitution establishes the habeas corpus in its Article 21. Its characteristic feature is that it is a special remedy for cases of deprivation of liberty in which the Constitution or the laws are infringed. Its purpose is to "restore the rule of law and ensure due protection of the person concerned", with investigation of the manner in which the detention is being conducted. It is regulated by the Code of Penal Procedure and the 1932 Agreed Order of the Supreme Court, which refers to its handling and judgment. The aforesaid enactment establishes a rapid and informal procedure for reaching a decision on the measure of deprivation of liberty. The remedy may be lodged by any person with the Court of Appeal, requires no formality and must be

ruled upon within 24 hours. Both the Constitution and the Code mention the possibility that the court may order the personal presentation of the detainee. In practice the latter's situation is ascertained by means of written communications or consultations by telephone directed to the apprehending body.

82. This remedy may also be lodged preventively on behalf of any individuals suffering a disturbance of or threat to their right to personal freedom and security. In this case the court announces the necessary measures to protect the person concerned.

3. Administrative remedies

83. In accordance with the Constitutional Organic Law of General Bases of the Administration of the State (N° 18.575, Art. 9): "Administrative acts shall be open to challenge by means of the remedies established by law. It shall always be possible to lodge that of reconsideration with the body responsible for the act in question and, where appropriate, hierarchical remedy before the superior of the official concerned, without prejudice to relevant jurisdictional action".

84. For its part, the Constitutional Organic Law of the Office of the Comptroller General of the Republic (N° 10.336, Arts. 6 and 10) states that any decree issued through the organs of state administration shall be subject to constitutional review proceedings. By virtue of this mechanism, the audit body exercises wide powers of investigation through reports that are binding on the administration, based on the extensive range of national norms, including that protecting the fundamental rights of individuals.

## D. Authorities with competence in human rights

85. In the exercise of their functions, all the authorities of the country have the duty to respect and promote human rights. The Constitution establishes, as the basis of constituted authority, the intention of the State to be "in the service of the individual", for which purpose it must "contribute to creating the social conditions which permit each and every one of the members of the national community to achieve the greatest possible spiritual and material fulfilment, with full respect for the rights and guarantees established by this Constitution" (Art. 1, 4th subpara.).

86. In Chile, human rights are regarded as limits to the sovereignty of the State. By constitutional mandate the power of the State is limited by the rights that derive from human nature. Article 5 of the Constitution proclaims in its first subparagraph that: "Exercise of sovereignty recognizes as a limitation the respect for the essential rights originating in human nature". As mentioned previously, by virtue of the constitutional reform of 1989, a second subparagraph was added to that article stating: "It is the duty of the organs of the State to respect and promote such rights guaranteed by this Constitution, and by the international treaties which have been ratified by Chile and are in force". By virtue of this norm, each organ of the State, in its field of competence, must respect the human rights of all the inhabitants of the country and promote them in order to ensure their effective validity. With that reform the Chilean State is pledged to the progress of human rights and compliance with the international obligations generated by the international human rights conventions that have been ratified and are in force.

87. The courts that go to make up the Judiciary (see paras. 47-59) are those with jurisdiction to entertain complaints lodged by individuals of violation of their rights. In Chile there are no specific public bodies responsible for monitoring the application of human rights.

88. As part of a process of modernizing justice in Chile, a reform is now being prepared that transforms the present system of penal procedure, with the issue of a new Code of Penal Procedure replacing the present inquisitorial procedure with one that meets the requirements of a public and adversarial oral trial, which will be the responsibility of a collegiate court weighing the evidence and passing sentence, and of government procurators with wide powers of investigation during the inquiry, in keeping with a set of guarantees protecting the accused right from the outset of the proceedings. As part of this transformation the Diario Oficial (Official Gazette) published, on 16 September 1997, Act N° 19.519 on constitutional reform relating to the public prosecution department, while currently pending are the organic bill on that institution and other draft legislation forming part of the procedural reform.

89. The right to legal defence is embodied in the Constitution (Art. 19, N° 3, 2nd and 3rd subparas.), supplemented by the Code of Penal Procedure (Arts. 67, 278 and 303). It is compulsory from the moment the accused is brought to trial, as is the guarantee of defence free of charge for those unable to afford it. This is provided by duty lawyers and those of legal assistance corporations where, side by side with contracted lawyers, law faculty graduates work without remuneration as a requisite qualification for their subsequent lawyer status.

1. Bodies responsible for supervising constitutional supremacy

90. The peremptory character of all the constitutional norms - previously stated - concerning fundamental rights and the duty of the authorities to protect them is based upon the embodiment of the principle of constitutional supremacy, which prescribes subordination of the action of state organs to the Constitution and the relevant norms established: "The precepts of this Constitution are binding both upon the heads or members of the said organs and on all persons, institutions or groups. Breach of this principle shall generate responsibilities and sanctions to be determined by the law" (Art. 6). The following organs are those entrusted with supervising this supremacy.

Constitutional Court

91. Its composition has been explained earlier (see para. 25(d)). It exercises preventive supervision of the normative supremacy of the Constitution during the procedure and as part of the law-making process. Organic constitutional laws and interpretative legislation are compulsorily subjected to this supervision. The rest of the law-ranking norms are monitored in the event of any querying of the constitutionality of a bill by the President of the Republic, the Senate, the Chamber of Deputies or one quarter of the serving members of either chamber.

92. Together with that assignment, the Constitutional Court may declare the unconstitutionality of parties, movements and organizations whose purposes, acts or conduct fail to respect the basic principles of the democratic system, attempt to establish a totalitarian regime or advocate violence as a means of achieving political aims.

Supreme Court

93. Ex officio or on application by a party, the Supreme Court protects the constitutional supremacy of legal norms in force that are at variance with the text of the Constitution, declaring them inapplicable only in the particular dispute concerned by the declaration, without depriving of validity or force the text regarded as unconstitutional. It discharges this function as part of its powers of management (see para. 50).

Electoral Qualifying Court

94. This Court has five members: four elected by the Supreme Court, three being justices or former justices and one a lawyer, in addition to a former president of the Senate or of the Chamber of Deputies having held the post for at least three years. This body takes cognizance of and qualifies vote counts in elections, resolves any complaints arising and proclaims the candidates elected.

Office of the Comptroller General of the Republic

95. The Office is headed by the Comptroller General of the Republic, an official who cannot be removed from his post and is appointed by the President of the Republic with the consent of the Senate adopted by a majority of its serving members. Its purpose is to check on the lawfulness of administrative acts and on the constitutionality of the decrees with legal force which, upon delegation of powers from the Congress, are issued by the President of the Republic.

2. Bodies responsible for shedding light on and making reparation for systematic human rights violations committed during the period of military rule

National Office for Return (ONR)

96. This entity was established to see to the reintegration of Chilean exiles and functioned until August 1994. During its three years of operation it dealt with 19,251 returnees, representing with their families a total of approximately 56,000 people.

National Commission on Truth and Reconciliation

97. On 25 April 1990, by Supreme Decree 335 of 9 May 1990 of the Ministry of Justice, the National Commission on Truth and Reconciliation was established for the purpose of investigating the most serious human rights violations committed between 11 September 1973 and 11 March 1990, these being understood to cover the situations of disappeared detainees and persons executed or tortured to death, and appearing to involve the moral responsibility of the State by virtue of acts committed by its agents or by persons in its service.

98. The report submitted by the Commission after nine months' work concluded that there had been extremely serious human rights violations resulting in the death, between 1973 and 1990, of a total of 2,279 persons. Apart from the cases noted, 614 were unable to be cleared up as the Commission did not have enough information to reach a conclusion.

National Corporation for Compensation and Reconciliation

99. Within a set period of activity which was extended until December 1996, the National Corporation for Compensation and Reconciliation, established by Act N° 19.123 of 8 February 1992, implemented the recommendations of the report submitted by the National Commission on Truth and Reconciliation, with particular regard to assessment of cases not resolved by the latter, investigation of the final fate of the victims, and moral and material compensation for the victims of human rights violations and their families.

100. Upon completion of its term, the Corporation issued a final report summarizing the work carried out during its four and a half years of activity. The Corporation dealt with and ruled on 2,188 cases denounced, 899 of which were assessed as victims. The work done by the Corporation and the Commission amounted together to the investigation of 4,750 denunciations and the declaration of 3,197 persons as victims - 2,095 whose deaths had been established and 1,102 who had disappeared after their detention.

101. The activities of the former Corporation regarding investigation of the final fate of the victims, compensation for them and the deposit of the records of that entity are at present continuing under the supervision of the Ministry of the Interior, as provided by the Government through Supreme Decree 1005 of 25 April 1997.

3. Compensation and rehabilitation schemes for victims

Compensation for members of the families of non-surviving victims of human rights violations committed during the period of military rule

102. The compensatory benefits granted by the State to members of the families of non-surviving victims of human rights violations or political violence committed in the country between 11 September 1973 and 19 March 1990 are regulated by Act N° 19.123, of 8 February 1992, which established the National Corporation for Compensation and Reconciliation.

103. The above law grants compensatory benefits to members of the families of persons recognized as victims by the National Commission on Truth and Reconciliation or by the National Corporation for Compensation and Reconciliation, whether they died or were victims of forced or involuntary disappearance; the benefits are equal for the relatives of both.

104. As stated previously, following the investigations of the Commission and the Corporation, the State has recognized as victims a total of 3,197 persons, in respect of 2,095 of whom (65.53 per cent) the circumstances of their death were established, and in 1,102 cases the circumstances of forced disappearance were ascertained.

105. Act N° 19.123 grants two types of economic benefits: a scheme of allowances and of educational benefits.

106. A monthly compensatory allowance is paid to persons in the following degrees of relationship with the victims: (i) surviving spouse; (ii) mother of the victim, or father if there is no mother; (iii) mother or father of a natural

child of the deceased; (iv) sons and daughters of the deceased, whether legitimate, natural, adopted or illegitimate (conceived outside wedlock and not recognized as natural children by means of the statutory formalities). For the first three categories of relations, the allowance is paid for life; for children it is paid until the last day of the year of their 25th birthday, unless they are disabled, in which case the allowance is also paid for life.

107. These allowances are readjusted annually, on the same occasions and in the same proportions as the pensions of the general public system of social security.

108. The State bears the cost, without deduction from the monthly allowance as in the case of other pay and pensions, of the percentage equivalent to the health service contribution, at present 7 per cent. This contribution enables the recipients to use the medical care system of their choice, which partially subsidizes the cost of health care either through the public entity, the National Health Fund, or by means of affiliation to private health schemes.

109. In addition to the recipients of compensatory allowances, the parents and brothers and/or sisters of victims, even if not in receipt of allowances, are entitled to the free medical care dispensed in the establishments depending on or attached to the national health system.

110. By express provision of Article 24 of Act N° 19.123, the compensatory allowance is compatible with any other allowance, of whatever nature, that the recipient may enjoy or be entitled to, and is likewise compatible with any other social security benefit established by law.

111. The educational benefits consist in the payment by the State of the full cost of registration and monthly tuition fees charged by higher educational establishments, universities, professional or vocational institutes and technical training centres in which the children of victims study, payment of which is made directly to the establishments concerned; and in the payment of a monthly attendance grant remitted during the term times of each academic year directly to the children of victims providing documentary evidence that they are pursuing studies in secondary or higher establishments. Unlike the monthly allowance, which, as stated, ends for children on the last day of the year of their 25th birthday, the age limit for the receipt of educational benefits is 35 years. These benefits and the monthly compensatory allowance may be drawn concurrently.

112. The Institute of Provisional Normalization (INP), which is the public service responsible for receiving applications and administering the system of allowances, handled 6,089 applications for allowances. Of these, 5,859 were granted and 230 were turned down for want of the statutory degree of relationship with the victims or because, in the case of children, they were over 25 years old. Of the persons recognized as beneficiaries, 5,726 have, as at 30 September 1997, been paid their allowances and 133 applications are in abeyance pending essential information to establish the applicants' credentials.

Indemnification for loss caused by the commission of an offence

113. The Code of Penal Procedure establishes the principle of compensation for the effects of a punishable act through civil proceedings to secure indemnification in respect of that act.

Indemnification for error of law

114. The Constitution (Art. 19, N° 7, (i)) establishes as a guarantee of personal freedom and security the right to indemnification by the State for any patrimonial or moral loss suffered as a result of having been tried or sentenced in any proceedings upon a decision which the Supreme Court, on application by the party concerned, declares to be unjustifiably erroneous or arbitrary.

## IV. INFORMATION AND PUBLICITY

### A. Dissemination of the report of the National Commission on Truth and Reconciliation

115. The report was issued in 3,000 copies and distributed to all public libraries and universities in the country. It was also publicized in the form of a supplement in the newspaper *La Nación*, which enjoys nationwide circulation (see para. 97).

### B. Dissemination of human rights instruments

116. It was reported that the tasks entrusted to the National Commission on Truth and Reconciliation included that of recommending the necessary legal and administrative measures to forestall and prevent the serious human rights violations on which it was responsible for shedding light. The report submitted by the Commission on completion of its assignment analyses the situation in Chile between 1973 and 1990, stating that there did not exist "a sufficiently firm national awareness of the overriding duty to respect human rights" and adding that "the education of our society did not succeed in duly incorporating these principles in its culture". In keeping with these conclusions, the Commission drew up wide-ranging and specific recommendations of a legislative, educational and cultural nature.

117. The work of coordinating, implementing and promoting the necessary action for compliance with those recommendations was entrusted to the National Corporation for Compensation and Reconciliation. Two of the programmes carried forward by the Corporation, "Education and Cultural Promotion" and "Legal Studies and Research", were designed to give effect to a culture of human rights.

#### 1. Publication of a document entitled "Constitution, Treaties and Essential Rights"

118. The document, prepared by the aforesaid "Legal Studies and Research" programme, brings together all the international human rights treaties that have been incorporated in Chile's own legal norms - with constitutional rank in accordance with Article 5 of the Constitution - together with an explanation of

the basic notions of the legal order of human rights, the nature of international treaties establishing them and their linkage with the country's internal law. The document was distributed to various public authorities and, in particular, to all judges in Chile.

2. Publications of the Programme for Education and Cultural Promotion of the National Corporation for Compensation and Reconciliation

119. This programme issued a set of publications with the cooperation of various public and private entities and contributions from professionals in a number of fields. These publications - some of which are mentioned below - are available in the country's public libraries, in the faculties and central libraries of Chilean university-level establishments, in the main private study centres, in non-governmental organizations and in the central and regional departments of the Ministry of Education.

The Convention on the Rights of the Child. Published in 1994, for distribution particularly to the country's teachers;

The Universal Declaration of Human Rights. Published in 1994, for distribution to participants in the training workshops for teachers conducted by educational supervisors in various regions of Chile;

Fundamental Contents of Human Rights for Education (1995). Intended for teachers and educators, it contains a study of 38 rights selected from four international human rights instruments, presented from the legal, philosophical, historical and educational angles;

Bibliographical Research for Human Rights Education (1994). A review of existing bibliographical material in Chilean libraries and documentation centres on the theme of human rights, for use by the country's teachers;

Human Rights Education. Notes for a new practice (1994). Published in connection with the Interdisciplinary Human Rights Course for Teacher Training Institutions, conducted in Santiago in August 1994 for teachers in the country's university colleges of education;

Human Rights Unit for the Dignity of the Person (1994). Presents 22 teaching units awarded prizes in a contest staged for teachers at all levels of formal education, in which they had to propose ways of incorporating the substance and principles of the Universal Declaration of Human Rights in the curriculum of each educational unit, in order to generate a teaching practice consistent with a culture respectful of human dignity;

Catalogue of teaching materials for human rights education (1994). Contains a selection of educational materials designed for human rights teaching;

Training Manual for Educators (1994). A collection of human rights training schemes conducted by the Social Pastoral Vicariate of the Archbishopric of Santiago, which were practised through countrywide work with teachers between 1989 and 1994;

Further Training for Teachers (1994). Proposal by the Social Pastoral Vicariate of the Archbishopric of Santiago, based on that entity's experience of encouraging a new form of teaching having regard to human rights education;

Self-learning Guides for Human Rights Education (1996). Contains 50 guides attempting to incorporate human rights in the various curricular subjects. They are intended for pupils in pre-basic, basic, secondary, differential and rural education; and for parents, attorneys and teachers.

### C. Preparation of reports to the committees of the international human rights conventions

120. As of March 1990, these reports are prepared directly by the Office of the Human Rights Adviser of the Ministry of Foreign Affairs, or supervised by that Office when prepared by governmental authorities specializing in the particular subject. Various government departments assist this task by supplying information.